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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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No. 2:20-cv-01900 WBS JDP

ORDER RE: PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT

ERIC REASON, an individual;
STEPHANIE BASS, an individual;
RASHEED REASON, individually and
as Co-Successor-in-Interest to
Decedent ERIC REASON II; TYRIQUE
REASON, individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II; K.R.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad litem
LATISHA PARKER; P.R.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
LATISHA PARKER; N.M.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
NIA MILLS; E.L.R., individually
and as Co-Successor-in-Interest
to Decedent ERIC REASON II, by
and through his Guardian Ad
Litem SHAWNTAY DAVIS; I.R.V.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
JULIA VELASQUEZ;

Plaintiffs,

V.

CITY OF RICHMOND, a municipal corporation, and the ESTATE OF VIRGIL THOMAS, individually and in his capacity as Police Sergeant for the CITY OF RICHMOND,

Defendants.

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Plaintiffs move for partial summary judgment on (1) the issue that Sergeant Thomas acted within the scope of his employment; (2) the issue that Sergeant Thomas acted under the color of law; (3) the Fourth Amendment excessive force claim; and (4) the negligence claim.¹

First, the court construes plaintiffs' motion on the issue of scope of employment as pertaining to plaintiffs' state law claims (Claims 3-5). Plaintiffs brought their state law claims against both Sergeant Thomas and the City. (See Second Am. Compl.) The court finds that there is a triable issue of fact as to whether Sergeant Thomas was acting within the scope of his employment as a police officer when he shot Mr. Reason.

¹ The City objects to the entirety of Exhibit 2 (Vallejo Police Report excerpts) and Exhibit 7 (Sergeant Thomas interview transcript) attached to the Buelna Declaration. (See Def.'s Obj. (Docket No. 64-2).) The City's evidentiary objections are primarily based on (1) lack of foundation; (2) lack of personal knowledge; and (3) hearsay. (See generally id.) The objections based on lack of foundation, personal knowledge, and vagueness "are superfluous." Alvarez v. T-Mobile USA, Inc., 2:10-cv-2373 WBS GGH, 2011 WL 6702424, at *3 (E.D. Cal. Dec. 21, 2011). As to the objection based on hearsay, the City has not shown why the contents of the documents could not be properly presented at trial. See id. at 1119-20. The City's evidentiary objections are accordingly overruled.

1 While “[a] police officer’s ‘off-duty’ status does not ‘insulate’
2 an employer ‘from potential liability for the torts of these
3 officers[,]’” “[a]n act serving only the employee’s personal
4 interest is less likely to arise from or be engendered by the
5 employment” French v. City of L.A., No. 20-cv-00416
6 JGB, 2022 WL 2189649, at *6 (C.D. Cal. May 10, 2022) (citations
7 omitted).

8 Second, the court construes the motion on the issue of
9 whether Sergeant Thomas acted under the color of law as
10 pertaining to plaintiffs’ § 1983 claims (Claims 1-2).
11 Plaintiffs’ § 1983 claims are brought only against Sergeant
12 Thomas. (See Second Am. Compl.) The court finds that there is a
13 triable issue of fact as to whether he was acting under the color
14 of law when he shot Mr. Reason. For example, it is disputed
15 whether Sergeant Thomas “invoked his status as a law enforcement
16 officer with the purpose and effect of influence the behavior of
17 others” or “engaged in conduct that ‘related in some meaningful
18 way either to [his] governmental status or to the performance of
19 his duties.” See Hyun Ju Par v. City & Cnty. of Honolulu, 952
20 F.3d 1136, 1140 (9th Cir. 2020) (citation omitted).

21 Third, the court finds that there is a triable issue of
22 fact as to whether Sergeant Thomas used excessive force in
23 shooting Mr. Reason. “[C]laims of excessive force are to be
24 judged under the Fourth Amendment’s ‘objective reasonableness’
25 standard.” Brosseau v. Haugen, 543 U.S. 194, 197 (2004)
(citations omitted). Here, whether Sergeant Thomas reasonably
feared for his life is a triable issue of fact. See Kisela v.
Hughes, 138 S. Ct. 1148, 1152 (2018) (excessive force claims

1 "require[] careful attention to the facts and circumstances of
2 each particular case, including . . . whether the suspect pose[d]
3 an immediate threat to the safety of the officers or others . . .
4 .") (quoting Graham v. Connor, 490 U.S. 386, 396 (1989)).

5 Fourth, the court finds that there is a triable issue
6 of fact as to whether the City and Sergeant Thomas were
7 negligent. As discussed above, there are triable issues of fact
8 as to whether Sergeant Thomas used excessive force. Because
9 plaintiffs' claims for excessive force and negligence arise from
10 the same conduct, there is a triable issue of fact as to whether
11 Thomas was negligent. See Susag v. City of Lake Forest, 94 Cal.
12 App. 4th 1401, 1412 (4th Dist. 2002) ("[I]t appears unsound to
13 distinguish between section 1983 and state law claims arising
14 from the same alleged misconduct."). Thus, the court must deny
15 plaintiffs' motion for summary judgment on negligence.

16 IT IS THEREFORE ORDERED that plaintiffs' motion for
17 partial summary judgment (Docket No. 60) be, and the same hereby
18 is, DENIED.

19 Dated: May 24, 2023


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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